84-1895

No.

Supreme Court U.S.
FILED
JUN 4 1985
ALEXANDER L. STEVAS
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

In Re:

IRBAN EDWARDS
JAMES HARDY
LINDA SOWELLS
FLORENCE M. STANSEL,
Petitioners.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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Attorney for the Petitioners

Of Counsel:

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QUESTIONS PRESENTED FOR REVIEW

Whether the Superior Court of the District of Columbia has co-equal status with the Supreme Court of the United States?

Whether the District of Columbia Court of Appeals erred in not ruling that the Superior Court of the District of Columbia exceeded its rulemaking power by enacting rules which abridged the Federal Rules of Civil Procedure and denied the Petitioners due process and equal protection of the law?

Whether Titles 11, Sections 743 and 946 of the District of Columbia Code, as amended, are unconstitutional?

Whether or not Petitioners' rights to appellate due process were violated when the only Appellate Judge to hear all of Petitioner's petitions dismissed these petitions, then recused himself?

PARTIES TO THE ACTION

Petitioners are civil litigants, either appearing as plaintiffs or defendants, in the Superior Court of the District of Columbia.

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1. *Statutory Provisions Involved:*

Amendment V, United States Constitution 2

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Title 28, Section 1257, United States Code 2

Title 28, Section 2072, United States Code 2

Title 28, Section 455, United States Code 9a, 10a, 16a, 17a

Title 11, Section 705, District of Columbia Code (1981 Edition) 4a

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Internal Operating Procedures, District of Columbia Circuit Court of Appeals, Part 4 ..... 4a

(The provisions of the District of Columbia Code are contained in the Appendix, with the exception of Title 11, Section 705.)

2. *Rules Involved*

Rules 1 and 16 of the Federal Rules of Civil Procedure 2, 4

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(The provisions of F.R.C.P. 1 are contained in the Appendix.)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

No.

In Re:

IRBAN EDWARDS
JAMES HARDY
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FLORENCE M. STANSEL
Petitioners.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

OPINIONS BELOW

On March 3, 1985 and on March 6, 1985, the District of Columbia Court of Appeals denied Petitioners' request for en banc consideration of the authority of the Superior Court of the District of Columbia to promulgate rules which conflict with, impinged upon, and subordinate the Federal Rules of Civil Procedure to the Superior Court Rules of Civil Procedure. The Orders and Petitions are contained in the Appendix.

JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1257 and Rule 19(1) of the Rules of the Supreme Court of the United States. Additionally, the constitutionality of Title 11, Sections 743 and 946 of the District of Columbia Code may be drawn into question and Title 28, Section 2403 of the District of Columbia Code may be applicable as no lower court has certified to the Attorney General the fact that the constitutionality of such act of Congress were drawn into question.

The question was raised by mandamus proceedings and the petitions for mandamus were denied by the District of Columbia Court of Appeals.

STATEMENT OF THE CASE

The Superior Court of the District of Columbia has the inherent power to promulgate its own rules and has done so. *Courthouse Practice and Procedure,* District of Columbia Court, 1979, as amended.

Petitioners alleged that their due process rights and right to equal treatment under law were denied by improper orders based upon invalid court rules, and an unconstitutional statute.

The Supreme Court of the United States promulgates the Federal Rules of Civil Procedure; the District of Columbia Superior Court promulgates those rules which modify and amend the Federal Rules of Civil Procedure, *Title 11, Section 946 of the District of Columbia Code, 1981, as amended.* The District of Columbia Court of Appeals promulgates rules which amend or modify the Federal Rules of Appellate Procedure, *Title 11, Section 743 of the District of Columbia Code, 1981, as amended.*

The Petitioners have complained that the promulgation by the District of Columbia Superior Court of Civil Rules

16-I and 40-II is an improper delegation of authority, is in derogation of and subordinates Rules 1 and 16 of the Federal Rules of Civil Procedure.

These Superior Court Rules violate Petitioners' due process rights and deny them the opportunity for a fair trial. Such promulgation is an unlawful delegation of legislative and judicial authority. Congress cannot grant to the local Courts the power to adopt rules which enlarge, modify or omit any substantive rights. In fact, Congress has withheld such power from the Supreme Court of the United States.[1]

REASONS FOR GRANTING WRIT

The Superior Court of the District of Columbia with the tacit approval of the District of Columbia Court of Appeals has used Title 11, Section 946 of the District of Columbia Code, as amended to give them authority to promulgate local rules which conflict with the Federal Rules and which deny Petitioners those federally created rights guaranteed by the Federal Rules of Civil Procedure. The promulgation of these rules is in derogation of the supervisory power of the appellate court and a statute granting such authority is in violation of the Separation of Powers Doctrine, reverses responsibility of supervision through legislation, and is otherwise unconstitutional.

Until the Supreme Court lays down ground rules, state and lower courts have open season to promulgate rules changing the Federal and Appellate Rules of Civil Procedure and are free to tamper with these Federal Rules of Civil and Appellate Procedure, and encroach upon the jurisdiction of the Supreme Court of the United States of America.

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[1]28 USCA Sec. 2072.

CONCLUSION

Congress delegated legislative authority to the District of Columbia Superior Court to promulgate local rules which modify and amend the Federal Rules of Civil Procedure, and Superior Court Rules 16-I and 40-II are in conflict with and have subordinated rules 1 and 16 of the Federal Rules of Civil Procedure to these local rules, and the District of Columbia Court of Appeals has affirmed this procedure. It is respectively requested that this Court issue certiorari to the District of Columbia Court of Appeals to set aside the District of Columbia Superior Court rules in conflict with the Federal Rules of Civil Procedure, to declare *Titles 11, Sections 743 and 946, 1981 as amended,* unconstitutional and take any other action that may seem just and proper in the protection of the rights of the Petitioners.

Respectfully submitted,

WILLIAM A. BURLESON
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003

Attorney for Petitioners

APPENDIX A

Amendment V. United States Constitution

. . . nor be deprived of life, liberty, or property, without due process of law.

Amendment XIV. United States Constitution.

. . . nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction, the equal protection of the law.

Title 11, Section 743, District of Columbia Code (1981 Ed.)

§ 11-743. Rules of court.

The District of Columbia Court of Appeals shall conduct its business according to the Federal Rules of Appellate Procedure unless the court prescribes or adopts modifications of those Rules. (July 29, 1970, 84 Stat. 481, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-743.)

Title 11, Section 946, District of Columbia Code (1981 Ed.)

§ 11-946. Rules of court.

The Superior Court shall conduct its business according to the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure (except as otherwise provided in title 23) unless it prescribes or adopts rules which modify those Rules. Rules which modify the Federal Rules shall be submitted for the approval of the District of Columbia Court of Appeals, and they shall not take effect until approved by that court. The Superior Court may adopt and enforce other rules as it may deem necessary

without the approval of the District of Columbia Court of Appeals if such rules do not modify the Federal Rules. The Superior Court may appoint a committee of lawyers to advise it in the performance of its duties under this section. (July 29, 1970, 84 Stat. 487, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-946.)

Federal Rules of Civil Procedure

Rule 1

SCOPE OF RULES

These rules govern the procedure in the United States district courts in all suits of a civil nature whether cognizable as cases at law or in equity, with the exceptions stated in Rule 81. They shall be construed to secure the just, speedy, and inexpensive determination of every action.

DISTRICT OF COLUMBIA COURT OF APPEALS
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

DISTRICT OF COLUMBIA
COURT OF APPEALS
FILED
MAR 6 -1985
/s/
Clerk

No. 84-1273

IRBEN EDWARDS, ET AL.,

Petitioners,

v.

CA15040-81
CA5944-81

HONORABLE JOSEPH M. HANNON,
Judge, Superior Court of the
District of Columbia,

Respondent,

BEFORE: Pryor, Chief Judge; Nebeker, Mack, Newman, Ferren, Belson, Terry*, and Rogers, Associate Judges.

ORDER

On consideration of petitioners' petition for en banc consideration, and it appearing that no judge of this court has called for a vote thereon, it is

ORDERED that petitioners' petition for en banc consideration is denied.

PER CURIAM

*Associate Judge Terry has recused himself from participating in this case.

Copies to:

Honorable Joseph M. Hannon

Clerk, Superior Court

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Charles L. Reischel, Esquire
Deputy Corporation Counsel

cwc

DISTRICT OF COLUMBIA COURT OF APPEALS
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

No. 85-11

DISTRICT OF COLUMBIA
COURT OF APPEALS
FILED
MAR 15 -1985
/s/
Clerk

LINDA SOWELLS, ET AL.,
Petitioners,

v.

HONORABLE JOSEPH M. HANNON,
Respondent,

BEFORE: Pryor, Chief Judge; Nebeker, Mack, Newman, Ferren, Belson, Terry, and Rogers, Associate Judges.

ORDER

On consideration of petitioners' petition for rehearing and for rehearing en banc, and it appearing that no judge of this court has called for a vote thereon, it is

ORDERED that petitioners' petition for rehearing en banc is denied.

PER CURIAM

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DISTRICT OF COLUMBIA COURT OF APPEALS
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

No. 84-1273

IRBEN EDWARDS, ET AL.,
Petitioners,

v. CA15040-81
HONORABLE JOSEPH M. HANNON, CA5944-81
Judge, Superior Court of the
District of Columbia,
Respondent,

PETITION FOR EN BANC CONSIDERATION

Petitioners allege that they have been denied due process of law because of the invalidity of a rule which was improperly promulgated by the D.C. Superior Court.

The D.C. Superior Court's promulgation of Superior Court rules which modify and amend the Federal Rules of Civil Procedure upon which Superior Court's rules are derived, is an improper delegation of authority to the D.C. Superior Court.

D.C. Superior Court Rule 16-I which has been promulgated by the D.C. Superior Court modifies and alters Superior Court Civil Rule 16 which is derived from the Federal Rules of Civil Procedure.

WHEREFORE, Petitioners request en banc consideration of the Court.

Respectfully Submitted,

/s/

William A. Burleson, #135277
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003
(202) 544-4111

/s/

Andrew Chopivsky, #349415
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003
(202) 543-5208

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed postage pre-paid this ____ day of _____, 1985 to Robert W. Goodson, Esquire, 1919 Pennsylvania Avenue, N.W., #700, Washington, D.C. 20006 and Charles L. Reischel, Esquire, Deputy Corporation Counsel.

/s/

Andrew Chopivsky

DISTRICT OF COLUMBIA COURT OF APPEALS
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

Civil Action No. 4562-82
LINDA SOWELLS

and

Civil Action No. 15870-80
FLORENCE M. STANSEL, et al.
Petitioners,

v.

HONORABLE JOSEPH M. HANNON,
Respondent,

APPEAL NUMBER 85-11

PETITION FOR REHEARING AND FOR HEARING EN BANC

The Supreme Court of the United States promulgates the Federal Rules of Civil Procedure. To the extent that the Federal Rules of Civil Procedure apply to the Superior Court for the District of Columbia, the Federal Rules of Civil Procedure are binding on the Superior Court of the District of Columbia, who adopts and derives their rules from these Federal Rules of Civil Procedure.

The authority for the Superior Court for the District of Columbia to promulgate rules which modify, amend or alter the Federal Rules of Civil Procedure is an improper delegation of authority granted to the Superior Court for the District of Columbia.

The promulgation by the Superior court of the District of Columbia of Superior Court Civil Rules 40-II and its

application in derogation of Federal Civil Rule 16 and 1, and its use to deny a right mandated by the rule, has prejudiced the petitioners and had denied them their rights to constitutional due process.

Respectfully Submitted,

/s/

Andrew Chopivsky, #349415
(202) 543-5208

/s/

William A. Burleson, #135277
1000 Pennsylvania Avenue, S.E.
Washington, D.C. 20003
(202) 544-4111

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed postage pre-paid this 30rd day of January, 1985 to: James P. Schaller, Esquire, One Lafayette Center, Suite 300 South, 1120 - 20th Street, N.W., Washington, D.C. 20036; Joseph M. Cahill, Esquire, 1333 H Street, N.W., Suite 600, Washington, D.C. 20005, and David L. Hilton, Esquire, 3132 North 10th Street, Suite 200, Arlington, Virginia.

/s/

Andrew Chopivsky

DISTRICT OF COLUMBIA COURT OF APPEALS
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

No. 85-11

DISTRICT OF COLUMBIA
COURT OF APPEALS
FILED
JAN 28 1985
/s/
Clerk

LINDA SOWELLS, ET AL.,
Petitioners,

v.

CA4562-82

HONORABLE JOSEPH M. HANNON,
Respondent,

BEFORE: Terry and Rogers, Associate Judges.

ORDER

On consideration of petition for writ of mandamus filed by petitioners in the above case, it is

ORDERED that petition for writ of mandamus is denied.

PER CURIAM

Copies to:

Honorable Joseph M. Hannon

Clerk, Superior Court

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DISTRICT OF COLUMBIA COURT OF APPEALS
500 INDIANA AVENUE, N.W.
WASHINGTON, D.C. 20001

DISTRICT OF COLUMBIA
COURT OF APPEALS
FILED
JAN 7 -1985
/s/
Clerk

No. 84-1273

IRBEN EDWARDS, ET AL.,

Petitioners,

v.

HONORABLE JOSEPH M. HANNON,
Judge, Superior Court of the
District of Columbia,

Respondent,

CA15040-81
CA5944-81

BEFORE: Newman and Terry, Associate Judges.

ORDER

On further consideration of petitioners' petition for writ of mandamus and the responsive pleadings of the parties filed with respect thereto, it is

ORDERED that the aforesaid petition be denied.

PER CURIAM

Copies to:

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Clerk, Superior Court

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Charles L. Reischel, Esquire
Deputy Corporation Counsel

cwc

Designation of Record Below

1. Petition for Mandamus of Irben Edwards and James Hardy.

2. Answer of Camp Springs Car Wash, Inc., to Petition for Mandamus.

3. Order, District of Columbia Court of Appeals, directing parties to respond to Petition for Mandamus within ten days.

4. Response of Petitioners in support of Writ of Mandamus.

5. Memorandum of Corporation Counsel dated October 19, 1984.

6. Reply of Camp Springs Car Wash, Inc., to Response of Petitioners in Support of Writ of Mandamus.

7. Reply of Petitioners to Reply of Camp Springs Car Wash, Inc.

8. Petition for Mandamus of Linda Sowells and Florence M. Stansel.